

MINUTES

North Dakota State Water Commission Audio Conference Call Meeting Bismarck, North Dakota

July 20, 2006

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room, Bismarck, North Dakota, on July 20, 2006. Governor John Hoeven, Chairman, called the meeting to order at 2:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Devils Lake
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBERS ABSENT:

Charles Halcrow, Member from Drayton
Larry Hanson, Member from Williston
Harley Swenson, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff
Lance Gaebe, Office of the Governor, Bismarck
Paul Danks, Mandan, Hidatsa and Arikara Nations, New Town
Dave Thompson, North Dakota Public Radio, Bismarck
Tom Rafferty, Bismarck Tribune, Bismarck
Dale Wetzel, Associated Press, Bismarck

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

DROUGHT DISASTER LIVESTOCK WATER SUPPLY PROJECT ASSISTANCE PROGRAM - APPROVAL OF PROPOSED AMENDMENTS TO N.D.A.C. ARTICLE 89-11, CHAPTER 89-11-01; AND APPROVAL OF ADDITIONAL STATE COST PARTICIPATION (\$200,000) (SWC Project No. 1851)

As required by North Dakota Century Code Chapter 61-34, an advisory committee was appointed in 1991 to develop administrative rules for the management of the Drought Disaster Livestock Water Supply Project Assistance Program. On June 24, 1991, the State Water Commission considered the advisory committee's recommendations and approved the administrative rules

defining the program's eligibility criteria, application procedures, and cost share limits. North Dakota Administrative Code Article 89-11 was implemented on July 1, 1992. The State Water Commission approved subsequent amendments to N.D.A.C. chapter 89-11-01 on September 15, 1992 and August 15, 2002, which became effective January 1, 1993 and August 27, 2002, respectively.

The State Water Commission allocated \$250,000 for the program on June 24, 1991, and an additional \$50,000 was allocated on July 1, 1992, for a total state contribution of \$300,000. The program was reactivated on July 1, 2002 following Governor Hoeven's issuance of North Dakota Drought Emergency Proclamation, Executive Order 2002-04. The Commission allocated \$200,000 on August 15, 2002 for the program for those counties identified in the executive order, and an additional allocation of \$150,000 on November 3, 2003, for a total state contribution of \$350,000 since program reinstatement. On March 10, 2005, the State Water Commission passed a motion that the remaining funds allocated to the program be expended, followed by program termination.

On June 28, 2006, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order 2006-05, which indicated that a drought emergency existed in south central and southwestern North Dakota. (*Note: Governor Hoeven subsequently issued Executive Order 2006-05.1 on July 12, 2006 to include all counties within North Dakota.*) Executive Orders 2006-05 and 2006-05.1 are attached hereto as **APPENDIX "A"**.

Pursuant to Executive Orders 2006-05 and 2006-05.1, the State Water Commission reinstated the Drought Disaster Livestock Water Supply Project Assistance Program on June 28, 2006, and approved state cost participation not to exceed an allocation of \$200,000 for the program.

The advisory committee reconvened on July 13, 2006 to consider proposed amendments to N.D.A.C. Article 89-11, Drought Disaster Livestock Water Supply Project Assistance Program, chapter 89-11-01. The following proposed amendments were presented for the State Water Commission's consideration:

Subsection 7 of section 89-11-01-05. Noneligible Items, is repealed as follows:

- ~~7. Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups or easements.~~

Subdivision c of subsection 1 of section 89-11-01-06. Application Procedure, is amended as follows:

- c. ~~A written~~ An estimate of the costs of the proposed water supply project.

Subdivision a of subsection 2 of section 89-11-01-06. Application Procedure, is amended as follows:

- a. Complete the project within ~~sixty~~ one hundred eighty days of receiving notification of approval of funding of the water supply project.

Secretary Frink explained that the proposed rule changes are necessary because of imminent peril to public health, safety, and welfare, and the need to respond to emergency stock water shortages as rapidly as possible. It was the recommendation of Secretary Frink that the State Water Commission approve, on an emergency basis, the amendments as proposed to North Dakota Administrative Code Article 89-11 for the Drought Disaster Livestock Water Supply Project Assistance Program, chapter 89-11-01.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve, on an emergency basis, the proposed amendments as recommended to North Dakota Administrative Code Article 89-11, Drought Disaster Livestock Water Supply Project Assistance Program, chapter 89-11-01. SEE APPENDIX "B".

Commissioners Hillesland, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

(Note: Pursuant to North Dakota Century Code section 28-32-03, Governor Hoeven approved the State Water Commission's request on July 20, 2006 to proceed with the emergency rulemaking to amend Article 89-11 of the North Dakota Administrative Code, Drought Disaster Livestock Water Supply Project Assistance Program, chapter 89-11-01. The proposed amendments were filed with the North Dakota Legislative Council, and became effective July 21, 2006 on an emergency basis.)

Secretary Frink explained that following the State Water Commission's decisions on June 28, 2006 to reinstate the program and to provide state cost participation not to exceed an allocation of \$200,000, approximately \$150,000 has been obligated to date to program applicants. In addition to the program response, Secretary Frink stated that the program criteria amendments, which were approved by the Commission at this meeting, will likely increase the average amount an applicant could receive, which is now approximately \$2,000.

Governor Hoeven emphasized the severity and danger associated with the statewide drought. He expressed concerns from the ranchers that the program's cost share limitation of \$3,500 should be increased because of inflationary costs, an applicant should be allowed to apply for multiple projects, and that an applicant's eligibility for cost share should be considered for each individual water supply project. Governor Hoeven explained that "those are the needs we have been hearing about, and I think the State Water Commission needs to consider very seriously the ranchers' concerns and issues."

North Dakota Century Code Chapter 61-34, Livestock Water Assistance Program, states, in part, ..."If the state engineer approves an application, the applicant may receive up to fifty percent of the cost of the project, but in no event more than three thousand five hundred dollars." In discussion of the program and the North Dakota Century Code, the State Water Commission members questioned whether an applicant can apply for multiple projects and be considered for cost participation up to \$3,500 for each water supply project. Secretary Frink was directed to consult with the Office of Attorney General staff for a legal interpretation of the North Dakota Century Code on this issue. Contingent upon legal satisfaction from the Office of Attorney General staff, it was the consensus of the Commission members that an applicant may apply for a maximum of three water supply projects, and be considered for a 50 percent state cost participation, not to exceed \$3,500, for each water supply project.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that Secretary Frink consult with the Office of Attorney General staff regarding the interpretation of North Dakota Century Code Chapter 61-34, section 61-34-04, Eligibility - Application for Assistance, relative to whether an applicant may apply for multiple projects and be considered for a 50 percent state

cost participation, not to exceed \$3,500, for each water supply project. Contingent upon legal satisfaction from the Office of Attorney General staff, the State Water Commission shall allow an applicant to apply for a maximum of three water supply projects, and the applicant shall be considered for a 50 percent state cost participation, not to exceed \$3,500, for each water supply project.

Commissioners Hillesland, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

(Note: Pursuant to the State Water Commission's direction to consult with the Office of Attorney General staff, Secretary Frink discussed this issue with Julie Krenz, Assistant Attorney General. Following a review of the applicable laws and administrative rules, it was Ms. Krenz's opinion that the State Water Commission has the flexibility to approve multiple projects for individual applicants.)

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve an additional allocation not to exceed \$200,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Drought Disaster Livestock Water Supply Project Assistance Program. This action is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

This action increases the total state cost participation to \$400,000 for the Drought Disaster Livestock Water Supply Project Assistance Program since reactivation on June 28, 2006.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference call meeting at 3:05 PM.

John Hoeven, Governor
Chairman, State Water Commission

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission

